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5 Attorneys for Defendant
6 DELIV, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 RAEF LAWSON, individually and on behalf of
12 all other similarly situated,

13 Plaintiff,

14 v.

15 DELIV, INC.,

16 Defendant.
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Case No. 3:18-cv-3632-VC

**DECLARATION OF BENJAMIN
MICHAEL MCILVAIN IN SUPPORT
OF DEFENDANT DELIV, INC.'S
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO RULE
12(B)(6) OR, IN THE ALTERNATIVE,
TO STRIKE PLAINTIFF'S CLASS
AND REPRESENTATIVE
ALLEGATIONS**

DECLARATION OF BENJAMIN MICHAEL MCILVAIN

I, Benjamin Michael McIlvain, declare as follows:

1. I am an adult over the age of 18 and a resident of the state of California. The information set forth herein is true and correct of my own personal knowledge (unless otherwise stated) and if asked to testify thereto, I would do so competently.

2. I am currently employed as the Vice President of Finance for Deliv, Inc. ("Deliv"). In that role, I am knowledgeable of contractor-facing aspects of Deliv's business, and I have personal knowledge of Deliv's business model and operating systems. I have been employed by Deliv since June 2016.

3. I make this declaration in support of Deliv's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) or, in the Alternative, Strike Plaintiff's Class and Representative Allegations. I am authorized to make these statements on behalf of Deliv. In my role at Deliv, I have access to and personal knowledge of the matters and information set forth in this declaration, and if called upon to testify thereto, could and would competently do so. The data from which the information set forth in this declaration was determined is maintained in the regular course of Deliv's business.

4. Deliv engages independent contractors to perform deliveries via the Deliv platform ("Delivery Specialists") in dozens of cities throughout the United States. Upon engaging with Deliv, Delivery Specialists are first required to sign Deliv's standard form Independent Contractor Agreement. It is only after signing the Independent Contractor Agreement that Delivery Specialists gain access to Deliv's online platform and perform deliveries.

5. Plaintiff Raef Lawson is a former Delivery Specialist who performed deliveries for Deliv in California. A true and correct copy of Lawson's Independent Contractor Agreement is attached hereto as Exhibit A.

6. The Independent Contractor Agreement contains an arbitration agreement and class and representative action waiver (collectively, "the Arbitration Agreement"), from which Delivery Specialists may choose to "opt out" within 30 days of signing. (*See* Ex. A, Section M.) To do so, pursuant to the Arbitration Agreement, Delivery Specialists need only "email[] Deliv . . . and stat[e]

1 your name and that you would like to opt out of the Arbitration Agreement to OptOut@Deliv.co.”
2 (*Id.* at Section M.8.) If the Delivery Specialist does not email Deliv within the requisite time period
3 to state their desire to opt out, the Arbitration Agreement provides that the Delivery Specialist is
4 deemed to have accepted the Arbitration Agreement, including the class and representative action
5 waiver. (*Id.*)

6 7. Deliv maintains records of any opt-out notices that it receives from Delivery
7 Specialists. Based on my review of company records, after Lawson signed the Independent
8 Contractor Agreement, he sent his intention to opt out of the Arbitration Agreement via email to
9 OptOut@Deliv.co and to Deliv’s support team.

10 8. Based on my review of company records, only two Delivery Specialists in California
11 (including Lawson) have opted out of the Arbitration Agreement.

12 9. Although Lawson signed his Independent Contractor Agreement on April 3, 2016,
13 based on my review of company records, he did not perform any deliveries until March 2017. At
14 that time, he only performed deliveries for Deliv on three separate dates, on March 13, 14, and 16,
15 2017, for only a few hours, total.

16 10. Deliv received a copy of Lawson’s written notice to the Labor and Workforce
17 Development Agency regarding his Private Attorneys General Act claim on or around April 10,
18 2017. A true and correct copy of that notice is attached hereto as Exhibit B.

1 I declare under penalty of perjury pursuant to the laws of the United States of America and
2 the State of California that the foregoing is true and correct.

3 Executed at Menlo Park, California, on this 16th day of July, 2018.

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EXHIBIT A

**INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement ("**Agreement**") between Deliv, Inc., ("the "**Company**"), a Delaware corporation, and the individual or entity listed on the signature page ("**Contractor**") is being made as of the date of electronic signature by Contractor ("**Effective Date**").

A. RECITALS.

Whereas the Company has created and maintains an online platform to shorten the delivery time from mall operators, retailers or others requesting delivery services ("**Clients**") to consumers ("**Consumers**");
Whereas the Company wishes to retain Contractor's services to provide delivery services to Consumers;
Whereas Contractor represents it has the training, experience, and equipment to provide professional delivery services;
Whereas Contractor represents that it owns or has access to a vehicle, bike or other transportation as necessary to provide delivery services;
Whereas Contractor wishes to contract with Company to provide services as an independent contractor or business; and
Whereas the Company operates in a dynamic and rapidly changing market that may require flexibility in matters such as processes and fees to effectively compete.

Now therefore, for good and valuable consideration, Contractor and Company agree as follows:

B. TERM OF AGREEMENT.

1. This Agreement will become effective on the date on which it is electronically signed and will continue in effect for one (1) week unless terminated earlier by either party.
2. In case of material breach of this Agreement by either party the other party shall have the right to terminate the Agreement immediately, without waiving any other remedies or rights under this Agreement, in law or in equity.
3. This Agreement shall automatically terminate on the occurrence of: (a) the dissolution, bankruptcy, or insolvency of Company; or (b) the death or dissolution of the Contractor.
4. Company may terminate this Agreement upon forty-eight (48) hours prior notice.

C. INDEPENDENT CONTRACTOR STATUS.

1. It is the express intention of the Parties to this Agreement that Contractor is and shall be an independent contractor and not an employee, agent, or partner of the Company or of any Client or partner. Nothing in this Agreement shall be construed as creating or establishing an employment relationship between the Company and Contractor and any of Company's Clients, Consumers or partners. Contractor will be solely responsible for, and the Company shall not provide or be liable for, typical employee benefits (including but not limited to, health and disability insurance, vacation and/or paid time off, etc.). Contractor is not authorized to make any representation, contract or commitment on behalf of Company, Client, or Consumer. Contractor represents and warrants that it has complied with all federal, local and state laws in the jurisdiction where the services are being performed. Contractor shall report all fees earned and pay at the applicable time any and all local, state and federal income taxes, and will provide the Company with documentation of such payment upon request. Company will not withhold any income taxes from payments Company may make to Contractor for Contractor's services. Contractor shall be solely responsible for all merchandise in its possession or control while performing delivery services. If any damage occurs to any merchandise while in Contractor's possession or control, Contractor shall be solely be responsible for all replacement cost, damages, fees and any and all other related expenses.
2. Contractor is solely responsible to determine the method and means by which Contractor will accomplish the services and otherwise fulfill Contractor's obligations hereunder subject only to Company's service guidelines, as detailed in the Service Level Agreement. Contractor will not receive any training, direction, or control from Company, other than as may be specifically set forth in this Agreement. Notwithstanding the foregoing, Contractor shall at all times provide those services in accordance with the terms and conditions set forth in this Agreement and any amendment or addendum to same, including the Service Level Agreement discussed in Section E, below.
3. Contractor shall have the right at all times to decline to provide services if it so chooses.
4. Contractor has the right to be employed by, contract with or otherwise perform similar services for other individuals or entities (specifically including direct competitors of Company) during the term of this Agreement provided that such services do not conflict or interfere with the service result the Contractor has agreed to provide to Company. In performing services for other individuals or entities, Contractor shall not make use of, or disclose, directly or indirectly, any confidential or proprietary information of Company, Consumers or Company's Clients or partners.
5. Contractor shall solely control its schedule. Contractor is free to devote as much or as little time to providing services as it determines to be in its best interest. If Contractor chooses to commit to a schedule block in which to provide services, Contractor agrees to honor its commitment to be available for delivery tasks during such time. If Contractor has accepted a delivery task, it shall honor that commitment. For the avoidance of

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doubt, nothing in this Agreement shall be construed to require Contractor to provide any services at any time, other than when Contractor has voluntarily committed to a schedule block or accepted a delivery task.

6. Contractor shall perform the services required by this Agreement from a location and via an appropriate transportation method of its own choosing, however, Contractor's chosen transportation method must: (a) meet all applicable Federal and state laws and Client requirements; and (b) be sufficient to safely accommodate and transport Clients' merchandise, and (c) conveyance must be in a fully enclosed compartment. Contractor must be able to lift fifty (50) pounds without injury.

7. Contractor will furnish and maintain at its expense all certifications, licenses, equipment and materials: (a) used to provide its services, including, but not limited to those required by Federal and state law; and (b) in accordance with any Client requirements. By way of example and not limitation Client requirements may include a vehicle with less than 100,000 miles, air conditioning and no visible damage. Contractor, at its sole cost and expense, shall maintain sufficient insurance or financial responsibility that meets or exceeds minimum state requirements, and that insurance shall be primary and noncontributory, to insure against loss and liability arising from Contractor's services.

8. If Certified by Company to provide delivery services, Contractor will not be required to participate in any further certification process and will not be required to undergo any mandatory training related to the professional skills necessary to perform the services required by this Agreement. To become "Certified", Contractor must complete the Company's initial onboarding certification course to demonstrate its familiarity with the Company app and other tools that may be used for delivery.

9. Company shall not provide any insurance coverage or benefit programs of any kind to Contractor, however, Company may, from time to time, offer insurance coverage for Contractor while providing delivery services for Company. To the extent any insurance coverage is offered by Company, the insurance coverage applies only while making a delivery for the Company and is only available in certain limited circumstances. Please see the terms and conditions of the program for more details at <http://www.deliv.co/faq/driver-faq/>. Under no circumstances shall Company be liable for or provide insurance coverage for accidents or damage in which Contractor is found to be responsible or liable for the damage. Company shall not provide any medical insurance or other benefit programs to Contractor. Contractor understands and agrees that it is responsible to provide all of its own insurance coverage, including vehicle and driver, unemployment, workers compensation, professional, property, and other relevant insurances. In the event that the carrier contracts directly with the shipper via the Zipments marketplace, no insurance is provided.

10. Contractor warrants and represents that it has obtained and will keep current all necessary and required federal, state or local business licenses.

11. Upon execution of this Agreement, Contractor shall provide a completed W-9 to Company.

12. Contractor agrees to receive notifications prior to a Scheduled Block or to access new work once they have checked into the app indicating the starting location and time for deliveries or other communications regarding delivery tasks available or to be completed. Contractor consents to having their calls to Deliv or to Consumers recorded, including while logged in to the Deliv application.

D. PREREQUISITES AND NECESSARY SKILLS.

1. In accordance with applicable state, local and federal law, Company maintains a zero tolerance drug and alcohol policy. Prior to and as a prerequisite for performing services under this Agreement, Contractor must provide, at its cost, evidence to Deliv of the following:

Proof that Contractor has passed a drug test by an independent party in accordance with industry standard and applicable local, state and federal law. If Contractor needs to obtain a drug test, Contractor may contact LabCorp to find a location nearby using the website: www.labcorp.com. Contractor may also contact Company for more information.

- Proof of insurance or protection against merchandise loss.
- Proof that Contractor has not been guilty of no more than two moving violations and not more than one at-fault accident in the 36 months prior to providing service to Company's Clients;
- Has no convictions of driving or delivering Under the Influence (or equivalent) in past 7 years
- Has no Major traffic citations or incidents in the past 60 months. Major traffic citations include;
 - Driving or delivering while impaired
 - Driving or delivering in possession of alcohol or drugs
 - Refusal to submit blood, urine or breath test
 - Driving or delivering with a suspended or revoked license
 - A felony in which a vehicle is used (i.e. Vehicle Manslaughter, Vehicular Homicide, Vehicular Assault, Hit and Run, eluding a police officer)
 - Reckless driving
 - Driving 25 or more mph over the speed limit, including speed contests and racing

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2. For Contractors Using Motor Vehicles. Prior to and as a prerequisite for performing services under this Agreement, Contractor must additionally provide, at its cost, evidence to Company of the following:

- A current and valid driver's license for the state in which a driver resides;
- Proof of vehicle insurance or financial responsibility in compliance with Federal and state requirements;
- Proof of vehicle registration.

If Contractor fails the background check required by the Company, fails to provide proof of the above requirements or later receives citation or conviction that would make Contractor ineligible to provide services, this Agreement shall immediately terminate.

3. Contractor agrees that it possesses and will provide at its expense, prior to and as a prerequisite to performing services: (a) access to a compatible computer system, reliable telephone and smartphone with a data and texting plan and high speed internet connection; (b) hands free communication functionality during delivery in compliance with applicable state law; (c) proof of Contractor's existing credentials; and (d) proof of basic communication competency.

E. SERVICE LEVEL REQUIREMENT. Company is retaining Contractor's short-term services to provide professional delivery services to Clients and third parties in accordance with the terms and conditions imposed by said Clients and third parties. Contractor agrees to provide those services in compliance with all applicable laws, rules and regulations and in accordance with the terms and conditions of this Agreement including, but not limited to, all applicable Federal, state and local bike laws and courier regulations and any amendment or addendum to this Agreement. The attached Service Level Agreement, which is incorporated herein by reference, outlines minimum contract specifications that all Contractors must meet to provide the level of service acceptable to Company, Consumers and Clients. Failure to meet the Service Level Agreement is considered a material breach of this Agreement and can result in Company's termination of this Agreement. If providing services under the bike program, Contractor agrees to notify Company at Support@Deliv.co if an item for delivery does not fit onto the bike or otherwise cannot be delivered.

F. CONTRACT COMPLIANCE AND VERIFICATION.

1. Company will make information and content available to Contractor on Company websites and mobile applications for iPhone and Android (collectively and individually referred to as the "**Site**"). Contractor agrees that access to and use of the Site is subject to the Company's terms of service and/or license agreement. As of the Effective Date, Company's terms of service may be found at: [http:// www.deliv.co/terms-of-service/](http://www.deliv.co/terms-of-service/)

2. Company reserves the right to verify compliance by Contractor with applicable laws, rules and regulations and compliance with the terms and conditions of this Agreement, the Company terms of service and license agreement and any addendum or amendment to the foregoing. Nothing in this paragraph shall be construed to permit Company to control the time, place, or specific manner in which Contractor provides delivery services except as otherwise set forth in this Agreement.

3. Contractor agrees to notify Company in writing by emailing Support@Deliv.co of any changes or updates to the background information (including its DMV records), or prerequisites listed in section D before accepting additional Company tasks.

G. COMPENSATION.

1. **Service Rates.** Contractor acknowledges that Company operates in a dynamic, rapidly changing, extremely price sensitive and competitive market and has set its Service Rates accordingly. Therefore, Contractor agrees that Company in its sole discretion, may change the rate and/or the type of payments made to Contractor for its services.

a. On Demand Services: Contractor shall be paid the Commission set forth in the Company app for delivery Task.

b. A Scheduled Block Commission is a flat fee based on the completion of each Task. A "**Task**" means committing to a one hour scheduled block of time and completing all deliveries within such schedule block. If a Contractor is committed to a schedule block, but provides no delivery services, Contractor shall not be paid. For the avoidance of doubt, fees and services are subject to change during the term at Company's sole discretion.

2. **Settlement.** If applicable, Company will pay the fees due to Contractor twice per month. A week begins on Monday and ends on the following Sunday. Payment shall be made via ACH or PayPal.

3. **Withholding.** Contractor shall have full responsibility for applicable withholding taxes for all compensation paid to Contractor under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Consultant's self-employment, sole proprietorship or other form of business organization, including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements.

H. EXPENSES. Company shall not be obligated to reimburse Contractor for any expenses incurred while engaged in the performance of services under this Agreement. Contractor shall be solely responsible for all such expenses, including, but not limited to, the cost of equipment,

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materials, training, licenses, parking fees, parking tickets, tolls and insurance. In addition, if while delivering an item to a customer the item is lost, stolen or damaged, Contractor shall be responsible for the cost of replacing the item and/or reimbursing the client. This will either be deducted from future earnings or you can send the amount via check or PayPal to Company.

I. CONFIDENTIALITY OF CONSUMER INFORMATION. Contractor agrees to maintain all Consumer Information in the strictest confidence. "**Consumer Information**" means any personally identifiable information, as defined by law, that Contractor may be in contact with in the course of providing services hereunder. Consumer Information includes an individual's identifiable financial or health information, including, but not limited to, name address, phone number, credit card number, medical history, health status, driver license number, and Social Security number. Contractor agrees not to disclose, use or maintain any Consumer Information except to perform services to Company's Clients pursuant to this Agreement. Contractor agrees to limit access to Consumer Information to Contractor and no other persons or third parties. Contractor agrees to notify Company immediately if Contractor becomes aware of any information regarding misuse or disclosure of Consumer Information.

J. CONFIDENTIALITY OF COMPANY INFORMATION. Contractor agrees to maintain this Agreement, and all information, written or otherwise, concerning or relating in any way to the services under this Agreement and Company's policies, practices, and business, including but not limited to Company's Clients and customers, in the strictest confidence and also agrees to keep any and all Client or Consumer materials and Confidential, Privileged, and Proprietary Information (as that term is defined below) in the strictest confidence. Company is committed to a policy of providing every safeguard possible to protect the privacy of Confidential, Privileged and Proprietary information pertaining to Company's business and operations, and the business and operations of its partners, Clients and Consumers. "**Confidential, Privileged, and Proprietary Information**" shall include, but not be limited to, paperwork, documents, files, computer software, copyright and intellectual property, trade secrets, know how, or any other information regarding Company's methods and procedures, financial information, accounting systems, customers, Clients, partners, and all Consumer Information. Contractor shall not use or disclose to any third party any Confidential, Privileged, or Proprietary Information unless under a court order of government agency demand and only after providing Company with notice of such demand or order. Contractor agrees that this provision shall survive the expiration or any earlier termination of this Agreement.

K. INDEMNIFICATION. Contractor hereby covenants and agrees to hold harmless, indemnify and defend Company, its officers, directors, employees, agents and Consumers from and against any and all claims, losses, damages, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) and liability, of whatever kind or nature, whether to person, including death or property, and costs, including but not limited to attorney's fees and costs of defense, arising out of or in any way connected with: (a) any activity performed by Contractor under this Agreement; or (b) any breach of this Agreement by Contractor. Contractor also agrees to indemnify, defend and hold the Company harmless from any liability for, or assessment of, any claims or penalties with respect to withholding taxes, Contractor's noncompliance with labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on the Company by the relevant taxing authorities with respect to any compensation paid to Consultant.

L. LIMITS AND LIABILITY. Contractor agrees that any legal remedy or liability that it seeks to obtain for actions or omissions of Company, Client, Consumers other users of the Site will be limited to a claim against the particular user or users who caused Contractor harm. Company shall not be liable for any direct or indirect losses, damages, injuries, expenses, or harm, occasioned by or arising directly or indirectly from any act or omission of Contractor. Contractor agrees that Company shall not be liable, directly or indirectly, for any of Contractor's losses, damages, expenses, injury, harm, claims and costs, regardless of origin, and however caused. In no event shall Company's liability to Contractor regardless of the form of action and whether in contract, tort, negligence or otherwise exceed two (2) times the aggregate amounts paid to Contractor pursuant to this Agreement in the twelve (12) months period preceding the event giving rise to the claim. Contractor hereby releases Company (and its officers, directors, agents, subsidiaries, joint ventures and employees) from any and all claims, demands, damages (actual, consequential, nominal, punitive, or otherwise), equitable relief, and any other legal, equitable, and administrative remedy, of every kind and nature, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, past, present, or future, arising out of or in any way connected with this Agreement, Contractor's performance of the services and Contractor's communication or interaction with other users on the Site. If Contractor is a California resident, then Contractor hereby waives California Civil Code section 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

M. ARBITRATION AGREEMENT.

1. Contractor and Company agree and acknowledge that they will utilize final and binding arbitration to resolve all disputes that may arise out of or relate to this Agreement and Contractor's relationship with Company, including retroactively requiring the use of arbitration for any dispute that may have arisen from the time that Contractor began providing services to the Company. Both the Company and Contractor agree that any claim, dispute, and/or controversy that either Contractor may have against the Company (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) or the Company may have against Contractor, arising from, related to, or having any relationship or connection whatsoever with Contractor's contract relationship with the Company, including the classification of Contractor as an independent contractor shall be submitted to and determined exclusively by binding arbitration. This Arbitration Agreement is governed by the Federal Arbitration Act, and Contractor acknowledges that this Agreement evidences a transaction in commerce. Included within the scope of this Arbitration Agreement are all disputes, whether based on tort, contract, statute (including, but not limited to, any claims of

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discrimination and harassment, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, or any other state or federal law or regulation), equitable law, or otherwise (excluding workers compensation, claims made under the Private Attorneys General Act of 2004 (PAGA), California Labor Code § 2698 et seq., state disability insurance and unemployment insurance claims, to the extent waiver of such a claim is deemed unenforceable by a court of competent jurisdiction). Claims may be brought before an administrative agency but only to the extent applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, and the National Labor Relations Board. Nothing in this Arbitration Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration. Disputes that may not be subject to predispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) are excluded from the coverage of this Agreement. To the extent permitted by applicable law, Contractor agrees not to bring a representative action under the PAGA (PAGA Waiver).

2. In the event a dispute arises between the parties with regard to the rights or duties created by this Agreement or Contractor's relationship with the Company, the parties agree to meet and confer in a good faith effort to resolve the dispute. In the event the parties are unable to informally resolve the dispute within thirty (30) days after the dispute has arisen, the parties agree to submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association. A copy of the applicable American Arbitration Association rules can be found at http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004130.

3. The location of the arbitration proceeding shall be no more than 45 miles from the place where Contractor last provided services for the Company, unless each party to the arbitration agrees in writing otherwise. If Contractor no longer resides in the general geographical vicinity where Contractor last provided contract services for the Company, Contractor and the Company shall agree to a location of the arbitration within 45 miles of where the Contractor resides. Claims in arbitration must be brought within the applicable statute of limitations period.

4. In arbitration, the parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator. **However, there will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective or representative action ("Class Action Waiver").** Notwithstanding any other clause contained in this Agreement, the preceding sentence shall not be severable from this Agreement in any case in which the dispute to be arbitrated is brought as a class, collective or representative action. Although a Contractor will not be retaliated against, disciplined or threatened with discipline as a result of exercising Contractor's rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class, collective or representative action in any forum, the Company may lawfully seek enforcement of this Agreement and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or representative actions or claims. Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Class Action Waiver or PAGA Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.

5. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Awards shall include the arbitrator's written reasoned opinion. Contractor and Company understand and agree to this binding arbitration provision, and both Contractor and the Company give up our right to trial by jury of any claim Contractor or the Company may have against each other.

6. The parties shall each bear their respective costs for legal representation at any such arbitration, except to the extent attorney's fees are explicitly provided by law. The parties shall split any initial administrative fee charged by the Arbitrator, up to a maximum cost to Contractor of two hundred fifty dollars (US\$250.00). The cost of the arbitrator and court reporter, if any, shall initially be borne by the Company; however, the Arbitrator shall have the discretion to award appropriate costs to the prevailing party, to the extent such awarding of costs is permitted by law, and/or to require the parties to split the costs associated with the arbitrator and/or court reporter.

7. Except as stated in Paragraph M. 3, if any term or provision, or portion of this Arbitration Agreement is declared void or unenforceable it shall be severed and the remainder of this Arbitration Agreement shall be enforceable.

8. Contractor may opt out of this Arbitration Agreement by notifying the Company in writing of its desire to opt out of this Arbitration Agreement by emailing Deliv within 30 days of signing this Agreement and stating your name and that you would like to opt out of the Arbitration Agreement to OptOut@deliv.co. If Contractor does not email Deliv stating your intention to opt out, Contractor shall be deemed to have accepted the Arbitration Agreement and the Class Action and PAGA Waivers included therein.

CONTRACTOR'S SIGNATURE, ELECTRONIC OR OTHERWISE, ATTESTS TO THE FACT THAT CONTRACTOR HAS READ, UNDERSTOOD, AND AGREED TO BE LEGALLY BOUND TO ALL OF THE ABOVE TERMS OF THE ARBITRATION AGREEMENT, SPECIFICALLY INCLUDING THE CLASS ACTION WAIVER.

A handwritten signature in black ink, appearing to be 'RL', is located in the bottom right corner of the page.

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N. STATE AND FEDERAL TAXES. Contractor is and agrees to be fully responsible for complying with all federal, state, and local laws in connection with the performance of this Agreement, including, but not limited to, payment of any estimated or other federal, state, or local income taxes, and payment of all applicable charges for Social Security, FICA, unemployment compensation and workers' compensation. Contractor is not eligible for, entitled to, nor shall participate in any of Company's or Client's pension, health, or other fringe benefits plans, if any such plans exist. Contractor agrees that Company is not be responsible for payment or withholding of any such items in connection with services rendered by Contractor under this Agreement.

O. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR. Contractor represents and warrants that: (a) Contractor will not hold himself, herself or itself out as being an employee of Company or its Clients to any third party, including, but not limited to, any state unemployment agency; (b) Contractor has the right to enter into, and to perform fully, all of its obligations under this Agreement; (c) its performance of the services does not and will not conflict with or result in any breach or default under any other agreement to which Contractor is subject; (d) it has the required skill, experience and qualifications to perform the services, and shall perform the services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services; (e) Contractor will devote sufficient resources to ensure that the Services are performed to achieve Client's requested result; and (f) it will perform the services in compliance with all applicable federal, state and local laws and regulations. Contractor agrees that he, she or it is an independent contractor with respect to all services provided pursuant to this Agreement.

P. ASSIGNMENT. Contractor may not delegate, assign or transfer its duties or interest in this Agreement without the written consent of Company. Contractor acknowledges and agrees that Company may freely delegate, assign and/or transfer its duties or interest in this Agreement without restriction.

Q. BINDING AFFECT. This Agreement shall be binding upon the parties hereto and their respective heirs, assigns, agents and representatives.

R. VOLUNTARY AGREEMENT. Company and Contractor represent and agree that each has reviewed all aspects of this Agreement, has carefully read and fully understands all provisions of this Agreement, and is voluntarily entering into this Agreement. Each party represents that that it has had the opportunity to review and all aspect of this Agreement with the legal, tax or other advisor or advisors of such party's choice before executing this Agreement.

S. ADDITIONAL REQUIREMENTS. As a prerequisite to performing any services under this Agreement, Contractor agrees to complete all forms necessary to allow Company to conduct a criminal background check. If specified in Attachment 1, Contractor will be charged a fee for the background check. No services shall be performed under this Agreement until the background check is completed and the results of the investigation are satisfactory to Company. If Contractor fails the background check, this Agreement shall immediately terminate. In the event that Company Clients have additional requirements for delivery service (ID badge, for example), Company shall notify Contractor of such requirements and Contractor agrees to: (a) comply with such requirements; or (b) immediately notify Company that Contractor objects to such requirement, in which event, either Company or Contractor may terminate this Agreement. Contractor's failure to provide Company with notice of objection may be deemed by Company as Contractor's agreement to comply with such Client's requirements.

T. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the State of Delaware without regard to its conflict of law principles.

U. ENTIRE AGREEMENT. This Agreement is the sole and entire Agreement between the Parties relating to the subject matter hereof, and supersedes all prior understandings, agreement and documentation relating to such subject matter. Any and all previous contracts or agreements are hereby terminated and void. Any modifications to this Agreement must be in writing and signed by both parties.

V. PARTIAL INVALIDITY AND SURVIVAL. If any provision of this Agreement is held by a court or arbitrator to be invalid, void, or unenforceable, the remaining provisions will, nevertheless, continue in effect without being impaired or invalidated in any way. This Section, Sections G-R, and Section U shall survive the expiration of any earlier termination of this Agreement.

W. WAIVER. The waiver of either party of a breach of any provision of this Agreement shall not operate or be construed, as a waiver of any subsequent breach.

X. CONSENT TO TRACKING AND USE OF PERSONAL INFORMATION.

1. Contractor hereby consents to Company accessing the communications and computing device(s) (e.g. smartphone) Contractor uses in the performance of the services at the Clients' request to gather GPS data for positioning. Contractor agrees that Company can use the information accessed for tracking purposes and can communicate this information to Clients, Consumers, retailers and other third parties involved in the services.

**INDEPENDENT CONTRACTOR AGREEMENT**

2. Contractor agrees that any information accessed by Company or provided by Contractor to Company via the Company website, application, phone app, email or otherwise can be used by Company for any purpose without compensation or restriction. Contractor hereby grants to Company an unlimited, worldwide, royalty-free, fully paid-up, irrevocable and perpetual license to use any information provided by Contractor to Company for any purpose and in any medium, including without limitation, marketing, tracking, providing information to Clients and Consumers, and aggregating data.

Service Level Agreement

This Service Level Agreement between Company and Contractor shall set forth the standards of professional conduct by which the services are to be performed. Contractor agrees to abide by the following guidelines. Failure to do so may result in termination of the Independent Contractor Agreement and the ability of Contractor to provide services.

Contractor shall not:

1. Make deliveries or provide services while intoxicated or impaired;
2. Smoke in vehicle while making a delivery or otherwise in possession or transporting goods;
3. Accept a delivery and fail to deliver such goods within the timeframe the Client has allocated for such delivery or failing to complete the delivery task in its entirety;
4. Make a delivery while driving or biking in an unsafe manner or in an unsafe vehicle, including in an unenclosed compartment;
5. Steal Client or Consumer merchandise;
6. Make a delivery with Unauthorized Persons. An Unauthorized Person is anyone who is not currently certified by Company to provide services;
7. Participate in any activity that Company could deem fraudulent or illegal in its sole and unfettered discretion;
8. Attempt to cheat Company with respect to payment of any amounts due for services;
9. If providing services under the bike program, fail to comply with applicable state and local bike laws and regulations, including, but not limited to those requiring protective headgear, a lamp, a bell, brakes and reflective devices.
10. Contact a Company Client or Consumer, or contact a customer of a Client without express authorization from Company;
11. Fail to maintain a secure work environment (share, misuse, or fail to prevent others from gaining access to: (a) a Client's Confidential, Privileged and Proprietary Information; and/or (b) Consumer Information, including name, address, phone number, email address or credit card information);
12. Fail to report a suspected or actual security breach;
13. Failure to provide services during a scheduled block 2 or more times in a month without cancelling more than 4 hours prior to the scheduled block.
14. Treat any Company employee, Client, Consumer, vendor or other contractor in a confrontational, offensive or demeaning manner;
15. Engage in any other conduct that is illegal, clearly unprofessional, or in violation of the Independent Contractor Agreement;
16. Engage in actions that cause a Client or Consumer to request removal of Contractor from their delivery services;
17. Be charged with any major citation (as defined above), unless such charges have been dismissed or a judgment is entered in favor of Contractor; or
18. Fail to follow a requirement imposed by a Client as specified in a Client checklist.

RL



INDEPENDENT CONTRACTOR AGREEMENT

INDEPENDENT CONTRACTOR AGREEMENT

APPENDIX 1

PAYMENTS

1. **Scheduled Block Commission:** \$13.00
2. **Distance Payment:** Fifty Cents (\$0.50) per delivery mile

Background Check & DMV Fee: \$38.00

Raef Lawson

04/03/2016

EXHIBIT B

L I C H T E N & L I S S - R I O R D A N , P . C .

ATTORNEYS AT LAW

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× ADMITTED IN MASSACHUSETTS
△ ADMITTED IN CALIFORNIA
◇ ALSO ADMITTED IN NEW YORK
† ALSO ADMITTED IN MAINE
□ ALSO ADMITTED IN TENNESSEE

April 10, 2017

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

General Counsel Deliv, Inc.
c/o Corporation Service Company
4400 Bohannon Dr. Suite 120
Menlo Park, CA 94025

Re: Notice Pursuant to California Labor Code § 2699.3(a)(1)

Dear General Counsel:

My firm represents Raef Lawson in connection with his claims pursuant to the California Labor Code against Deliv Inc. ("Respondent"). Mr. Lawson has worked for Respondent as a delivery driver in the Los Angeles, California area. Because Respondent illegally misclassifies its workers as independent contractors rather than employees, including Mr. Lawson, Respondent has violated numerous provisions of the California Labor Code, as set forth further below.

Pursuant to Cal. Lab. Code §2699.3(a)(1), please consider this letter notice of the specific provisions of the California Labor Code violated by Respondent that may result in penalties under the Private Attorney General Act of 2004, including the facts and theories to support the alleged violations. Notice has also been sent via online filing to the Labor and Workforce Development Agency ("LWDA").

Factual Background

Respondent Deliv is a same-day delivery company based out of Menlo Park, California (with other main offices in Atlanta, Georgia and Grand Rapids, Michigan), which does business across the United States, including extensively throughout California. Deliv employs delivery drivers such as Mr. Lawson to perform deliveries for businesses to their customers. Deliv requires its delivery drivers to sign contracts in order to obtain work, and it classifies these workers as independent contractors despite the following reasons – among others that may be discovered at a later date – that delivery drivers should be properly classified as employees:

L I C H T E N & L I S S - R I O R D A N , P . C .

- Drivers provide a service (i.e. delivering packages and goods) that benefits Deliv and that forms the very essence of Deliv's business as "the new delivery standard" for same-day delivery;
- Deliv retains the right to terminate its delivery drivers like Mr. Lawson in its discretion if it believes the driver has failed to meet its standards;
- Delivery drivers like Mr. Lawson do not engage in a business distinct and independent from Deliv's business and instead form an integrated part of Deliv's business model;
- Deliv controls drivers' schedules and pay; delivery drivers must set their availability every Friday for the following week, and Deliv assigns drivers to shifts in three hour blocks of time. Deliv pays drivers based on a formula that Deliv created and which drivers cannot negotiate;
- Delivery drivers do not possess any special skill or prior experience;
- Delivery drivers must wear Deliv-branded lanyards while working;
- Delivery drivers must report for their scheduled shifts to specified neighborhoods or locations where Deliv directs them to wait for orders from customers;
- Delivery drivers must undergo background checks;
- Deliv communicates directly with customers and frequently follows up with delivery drivers about deliveries if the customer complains that something was not delivered, was damaged, or otherwise failed to meet their expectations;

Because Deliv delivery drivers are, in fact, employees, they are protected by the provisions of the California Labor Code. Accordingly, we wish to notify you of the following violations of the California Labor Code:

Violations of the California Labor Code

1. Respondent has violated Cal. Lab. Code § 2802 by failing to reimburse its delivery drivers for all reasonably necessary expenditures incurred in the discharge of their duties delivering packages, including but not limited to the cost of gas and maintaining their vehicles and of their phones and phone data plans; and
2. Respondent has violated Cal. Lab. Code §§ 1197 and 1194 by failing to assure that its delivery drivers receive minimum wage for all hours worked; and

L I C H T E N & L I S S - R I O R D A N , P . C .

Accordingly, Mr. Lawson seeks all applicable civil penalties related to the foregoing violations.

Yours Truly,

A handwritten signature in blue ink, appearing to read "Shannon Liss-Riordan".

Shannon Liss-Riordan

cc: California Labor and Workforce Development Agency (via online filing)